

Mar 18, 2003

Mr. Philip C. Palilla
President
Q/C Resource
16 Taunton Lake Road
Newtown, CT 06470

Reference No. 02-0294

Dear Mr. Palilla:

This responds to your November 6, 2002 letter requesting clarification on the retention of shipping papers under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you request that an exception be granted for shipping sealed source radioactive materials in devices/gauges.

In your letter, you stated that your company ships portable sealed source radioactive materials in devices/gauges and that the shipping paper retention requirements under the HMR would adversely affect your company. You also stated that your company uses and maintains records required by the Nuclear Regulatory Commission (NRC) including shipping papers and daily records of shipments, etc. You also stated that you did not comment on the notice of proposed rulemaking or the final rule published in the Federal Register under Docket No. HM-207B, "Retention of Shipping Papers."

The requirement to retain hazardous materials shipping papers for one year has been a self-executing requirement under the Federal hazardous materials transportation law (Federal hazmat law) since August 1994. (See 49 U.S.C. § 5110(e)). The final rule published under Docket No. HM-207B (67 FR 46123) amended the HMR to require shippers and carriers to retain a copy of each hazardous material shipping paper, or an electronic image thereof, for a period of 375 days after the date the hazardous material is accepted by the carrier. The July 12, 2002 final rule incorporated into the HMR the statutory requirement from the Federal hazmat law.

After publication of the final rule on July 12, 2002, there was a 30-day period in which to file an appeal. We received five appeals to the final rule. On November 1, 2002, we published a final rule; response to appeals (67 FR 66571). In this response to appeals, we provided relief to the air and vessel modes of transportation, similar to that we provided to rail shipments regarding the date on the shipping paper. We removed the word "immediately" from the requirement to make copies of the shipping papers available to officials upon request. This response to appeals was effective on November 1, 2002, with voluntary compliance authorized as of August 12, 2002, the effective date of the final rule. The final rule provides relief to those persons using a "permanent" shipping document to accompany a hazardous material shipment, e.g., gasoline or sealed source radioactive devices/gauges. When "permanent" shipping papers are used, we allow retention of daily shipping or inventory receipts instead of the same shipping paper on a daily basis. As stated in the final rule, we believe that retention, including electronic retention, of daily shipping or inventory receipts which are used in the normal course of business instead of

the retention of the same shipping paper used for multiple daily shipments of the same hazardous material already provides adequate relief for companies.

I hope this answers your inquiry.

Sincerely,

Delmer F. Billings
Chief, Standards Development
Office of Hazardous Materials Standards

172.201(e)